

UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF NEW YORK

-----X DOCKET NO.: 21MC102 (AHK)
IN RE: LOWER MANHATTAN DISASTER SITE
LITIGATION

NOTICE OF APPEAL

-----X

PLEASE TAKE NOTICE that the plaintiffs represented by WORBY GRONER EDELMAN & NAPOLI BERN, LLP, hereby appeal to the United States Court of Appeals for the Second Circuit from the July 25, 2012 "Summary Order" entered in master docket 21MC102 and in the individual docket numbers listed on the annexed Rider "A": (document no: 4351 in docket 21MC102). Plaintiffs appeal from each and every part of the subject order.

Dated: New York, New York
August 16, 2012

WORBY GRONER EDELMAN & NAPOLI BERN, LLP
Counsel for Plaintiffs -Appellants



Denise A. Rubin (DR5591)
350 Fifth Avenue, Suite 7413
New York, New York 10118
Phone: (212) 267-3700

#	Last	First	Docket	Counsel
1	Acevedo	Carmelo	07cv01453	Worby Groner Edelman & Napoli Bern
2	Agudo	Claudio	07cv04447	Worby Groner Edelman & Napoli Bern
3	Alloggio	Anthony	07CV04240	Worby Groner Edelman & Napoli Bern
4	Bunay	Carlos	07CV01571	Worby Groner Edelman & Napoli Bern
5	Colucci	John	07cv01485	Worby Groner Edelman & Napoli Bern
6	Concepcion	Beatriz	07CV01594	Worby Groner Edelman & Napoli Bern
7	Daquila	Steven	06cv08756	Worby Groner Edelman & Napoli Bern
8	Datil	Leonor	07cv01488	Worby Groner Edelman & Napoli Bern
9	DeLucy	Louis	07CV05285	Worby Groner Edelman & Napoli Bern
10	Eramo	Joseph	06cv14632	Worby Groner Edelman & Napoli Bern
11	Fairweather	Robert	07CV05408	Worby Groner Edelman & Napoli Bern
12	Ferraro	Kenneth	06CV12062	Worby Groner Edelman & Napoli Bern
13	Hernandez	Maria Cecilia	08cv05156	Worby Groner Edelman & Napoli Bern
14	Higgins	James	07CV05395	Worby Groner Edelman & Napoli Bern
15	Johnson	Charles	07CV05558	Worby Groner Edelman & Napoli Bern
16	Kelly	Egerton	06cv13971	Worby Groner Edelman & Napoli Bern
17	Lombardi	John	05CV01678	Worby Groner Edelman & Napoli Bern
18	McPartland	Michael	05CV01181	Worby Groner Edelman & Napoli Bern
19	Mesa	Luis	07CV05303	Worby Groner Edelman & Napoli Bern
20	Orellana	Aurellio	07CV01674	Worby Groner Edelman & Napoli Bern
21	Pena	Luis	05cv10741	Worby Groner Edelman & Napoli Bern
22	Schmidt	Robert	06cv10878	Worby Groner Edelman & Napoli Bern
23	Tedaldi	Guy	07CV05430	Worby Groner Edelman & Napoli Bern
24	Torres	Javier	08CV02725	Worby Groner Edelman & Napoli Bern
25	Tucker	Jerome	07CV05323	Worby Groner Edelman & Napoli Bern
26	Vanbelle	Mark	06cv11281	Worby Groner Edelman & Napoli Bern
27	Vario	Thomas	05CV01347	Worby Groner Edelman & Napoli Bern
28	Vasquez	Camilo	08CV02313	Worby Groner Edelman & Napoli Bern
29	Vivar	Luis	07cv04523	Worby Groner Edelman & Napoli Bern
30	Wragg	Clarence	06cv08125	Worby Groner Edelman & Napoli Bern
31	Yaguana	Aquiles	07cv04525	Worby Groner Edelman & Napoli Bern

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 7/25/12

IN RE WORLD TRADE CENTER LOWER
MANHATTAN DISASTER SITE LITIGATIONX
: **SUMMARY ORDER**
: **DISMISSING CASES**X
: 21 MC 102 (AKH)
:
:
:
X

ALVIN K. HELLERSTEIN, U.S.D.J.:

On July 23, 2012, I heard oral argument on defendants' motion for summary judgment to dismiss certain cases. The motion is granted, subject to the conditions described below.

The first category of cases is made up of 31 plaintiffs, identified in Exhibit A. Plaintiffs failed to swear to their answers to court-ordered interrogatories by the much-extended, required date of December 2, 2012. These plaintiffs are in precisely the same situation as 170 other plaintiffs who failed to file such proper certifications, plaintiffs whom I dismissed by order of December 8, 2011. For the same reasons put forth in that order, I dismiss these 31 plaintiffs. Should these plaintiffs wish to move to open the judgment dismissing their cases, they must file proper motions by August 24, 2012 showing a ground provided by Rule 60(b), Fed. R. Civ. P. I shorten the time for filing such motions because of the several prior motions and extensions given to plaintiffs, and since it is necessary to coordinate discovery relative to all parties in order to avoid prejudice and delay.

The second category of cases is made up of those plaintiffs who, under oath, answered "None" to the court-ordered interrogatory asking "[f]or which diagnosed condition(s)/injury(s)/disease(s) does [Plaintiff] seek recovery?" Plaintiffs may not create an

issue of fact, after the filing of defendants' motion, by disputing prior sworn statements. Trans-Orient Marine Corp. v. Star Trading & Marine, Inc., 925 F.2d 566, 572 (2d Cir. 1991). Nor are claims for "medical monitoring" or fear of cancer stand-alone causes of action if there is no "clinically-demonstrable presence of a toxin in the plaintiff's body, or some other indication of a toxin-induced disease." DiStefano v. Nabisco, Inc., 2 A.D.3d 484, 485 (N.Y. App. Div. 2d Dep't 2003); Abusio v. Consolidated Edison Co., 238 A.D.2d 454 (N.Y. App. Div. 2d Dep't 1997). Defendants shall settle an order identifying the plaintiffs affected by this order, and both sides shall submit same by August 8, 2012.

The clerk shall close the docket numbers identified in Exhibit A.

SO ORDERED

Dated: July 25, 2012
New York, New York



ALVIN K. HELLERSTEIN
United States District Judge

#	Last	First	Docket	Counsel
1	Acevedo	Carmelo	07cv01453	Worby Groner Edelman & Napoli Bern
2	Agudo	Claudio	07cv04447	Worby Groner Edelman & Napoli Bern
3	Alloggio	Anthony	07CV04240	Worby Groner Edelman & Napoli Bern
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SOUTHERN DISTRICT OF NEW YORK

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LITIGATION
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DENISE A. RUBIN, an Attorney duly licensed to practice before the Courts of the State of New York and a member of the Bar of this Honorable Court, hereby Declares under penalty of perjury:

On August 16, 2012, I duly served a true copy of the within NOTICE OF APPEAL on the persons listed below by e-mail transmission.

Lee Ann Stevenson
Kirkland & Ellis, LLP
601 Lexington Avenue
New York, NY 10022
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Richard E. Leff
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80 Broad Street, 23rd Floor
New York, New York 10004
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And upon all parties receiving electronic notification via the US District Court's ECF filing system


DENISE A. RUBIN

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SOUTHERN DISTRICT OF NEW YORK

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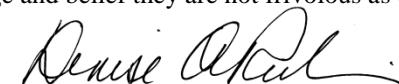
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WORBY GRONER EDELMAN & NAPOLI BERN, LLP

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New York, New York 10118
(212) 267-3700

===== The undersigned attorney hereby certifies, pursuant to Fed. R. Civ. P. 11 and 22 NYCRR §130-1.1-a, that I have read the within papers and that to the best of my knowledge and belief they are not frivolous as that term is defined in 22 NYCRR § 130-1.1(c) and Fed. R. Civ. P. 11.



Attorney name: Denise A. Rubin

PLEASE TAKE NOTICE:

NOTICE OF ENTRY

that the within is a (certified) true copy of an _____ duly entered in the _____ office
of the clerk of the within named court on _____ 200____.

NOTICE OF SETTLEMENT

that an order _____ of which the within is a true copy, will be
presented for settlement to the HON. _____ one of the judges of the
within named Court, at _____ on _____ 200____ at _____ O'clock _____.M.

Dated, _____

Yours, etc.

WORBY GRONER EDELMAN & NAPOLI BERN, LLP